THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO.7432 of 2001

O R D E R (Per the Hon'ble Sri Bilal Nazki, J):

Heard learned counsel for the parties.

Basically this writ petition raised a dispute between two Gram Panchayats for sharing the taxes collected by the State under Andhra Pradesh Tax on Professions, Trades, Callings and Employments Act, 1987 (hereinafter referred to as 'the Act').

The petitioner-Gram Panchayat claims that some of the offices and the residential quarters belonging to respondent No.2 are located in its area whereas some of the units of respondent No.2 are located in third respondent-Gram Panchayat. Although respondents' contention is that some residential quarters are located in the petitioner-Gram Panchayat whereas all offices are located in third respondent-Gram Panchayat.

It appears that before the Act came into force in 1987, the Gram Panchayats were empowered to levy profession tax in the areas of operation. But after coming into operation of 1987 Act, this power was taken away from the Gram Panchayats in terms of Section 32 of the Act.

Section 32 of the Act reads as under:-

> *"**Section 32**: **Local authorities not to levy profession tax** :-*
>
> *Notwithstanding anything in any enactment, governing*

the constitution of establishment of a local authority, no local authority shall, on or after the commencement of this Act, levy any tax on professions, trades, callings or employments."

Under Section 35 of the Act, it is envisaged that out of the revenue collected under the Act, grants could be made to the local authorities as they would suffer loss of revenue.

Section 35 of the Act lays down:-

*"**Section 35**: **Grant to local authorities for loss of revenue**:-*

Out of the proceeds of the tax, penalties, interest or other amounts recovered under this Act, there shall be paid annually to such local authorities as were levying a tax on professions, trades, callings and employments, immediately before the commencement of this Act, such amounts on the basis of the highest collections of such taxes, penalties and interest made by them in any year during the period of three years immediately preceding such commencement as may be determined by the Government in this behalf."

After perusing the various provisions of the Act and the Rules made thereunder and after hearing learned counsel appearing for the parties, it is clear that the Act envisages levy and collection of professional tax by the State and the whole revenue collected under the Act is the revenue collected by the State and it is for the State as to how such revenue shall be distributed, although Section 35 of the Act lays down that the revenue could be made available to the local authorities. Therefore in terms of the Act or the Rules made thereunder, no Gram Panchayat is entitled to any share in the revenue collected under the Act, not even those Gram Panchayats, where the offices are located, where the assessees are working, who paid tax under the Act, are entitled to any revenue from such tax. However Government is empowered to make available some of the revenue collected by it to the local bodies under the Act. It appears that the Government was conscious that the local bodies have suffered on account of Section 32 of the Act, therefore it

passed a G.O. being G.O.Ms.No.544 on 12-07-1999.

The G.O. reads as under:

> *"Profession Tax is being levied and collected from the persons engaged in Profession, Trade, Callings and Employment in the State and it is being distributed to the Local Bodies on yearly basis. The Andhra Pradesh Panchayat Sarpanches Association has been brought to the notice of the Government that the Local Bodies are unable to take up the developmental works in time as they are not getting timely releases of funds relating to Profession Tax Collections. Therefore, they have requested the Government that collection of Profession Tax may be released on quarterly basis as being done in the case of Entertainment Tax.*
>
> *The Government, after careful consideration of the matter, have decided to release 95% collection of the Profession Tax to the Local Bodies on quarterly basis with immediate effect, after deducting 5% of the Profession Tax towards administrative charges.*
>
> *The Commissioner of Commercial Taxes is, therefore, requested to take necessary action accordingly.*
>
> *This Order issued with the concurrence of Finance and Planning U.O.11509/EDS/Per/ 99. Dt.13-4-1999."*

Although this G.O. authorizes release of 95% collection of the profession tax to the local bodies, the G.O. itself is vague to the extent that it does not specify as to how the collection of 95% of the profession tax is to be distributed amongst various local bodies if an establishment is established in two Gram Panchayats and tax is collected in both the Gram Panchayats. Would both the Gram Panchayats be entitled to grant or only one of them would be entitled to such a grant. If both would be entitled, what would be the method of sharing the amount of grant. Without going into the merits and respective claims of the two Gram Panchayats as to whether offices of the respondent No.2 are located solely in one Gram Panchayat or they are in two Gram Panchayats, we feel it necessary to direct the Government to look into the matter and come out with a suitable order by which the grey areas pointed out by us can be removed.

With these directions, the writ petition is being disposed of.

We expect that the matter will receive the attention of the Government and it shall be decided within two months. We are also told that in different areas in different districts now different methodologies are being adopted by the authorities concerned to distribute the grant made available to those authorities in terms of G.O.Ms.No.544. Therefore, if the Government takes a fresh look, uniform method could be ensured for whole of the State. No order as to costs.

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(BILAL NAZKI, J)

27th December, 2005

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(C.V.RAMULU, J)

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THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO.7432 OF 2001

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Date: 27-12-2005

Between:

Gram Panchayat, Kondapally. …Petitioner

And

The Deputy Commercial Tax Officer,

Kanchakacharla, and two others.

…Respondents